IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.155 OF 2006

Smt.Kamlini Dharmaraj Ashar ..Petitioner.

Vs.

M/s.Bhadani Associates & Ors. ..Respondents.

Mr.J.Reis with Mr.Rahul Chitnis i/b.V.Deshpande & Co. for the Petitioner.

Mr.Firdosh Pooniwala with Mr.Y.R.Shah for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH JUNE, 2006

P.C. :

This is a petition under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside an award made by the arbitral tribunal, consisting of three learned arbitrators.

2. The Respondent's claim was for specific performance of an agreement dated 8.4.1988 and an MOU dated 10.5.2001. The learned Arbitrators came to the conclusion that both the agreement and the MOU were valid and binding, but declined to grant specific performance. The learned arbitrators granted damages in lieu of specific performance.

3. At the outset, it must be mentioned that the Respondents have raised a preliminary objection as to jurisdiction. Mr.Pooniwalla submitted that this Court has no jurisdiction to hear the matter and that the Thane Court had jurisdiction to hear the matter. It is not necessary to consider this objection as I am not inclined to admit the petition even on merits.

4. Mr.Pooniwala stated that the Respondents had also filed a petition to challenge the award. That petition has been filed before the Civil Judge, Senior Division, Thane. That matter will be decided on its own merits. The Petitioner has also, out of an abandoned caution, filed a petition before the Civil Judge, Senior Division, Thane. That petition naturally will stand concluded by this order subject ofcourse to any orders that may be passed in Appeal.

5. The finding of the Arbitrators were challenged on two grounds, both of which pertained only to the appreciation of evidence.

6. Mr.Reis, the learned counsel appearing on behalf of the Petitioner submitted that the award is based on no evidence whatsoever.

7. I am unable to agree. In paragraph 38, the learned Arbitrators have adopted this reasoning. They held that Respondents/Claimants sold flats in the adjoining plot at the rate of Rs.1409/- per sq. ft. They accepted the price of sale of the said flats for the purpose of computing damages. No error can be found in this approach.

8. The Petitioner contended that the Government rate was Rs.1194/- per sq. foot. However, the learned Arbitrators adopted the rate of Rs.1409/- on the aforesaid basis. This is a question of appreciation of evidence which does not warrant interference under section 34 of the Arbitration and Conciliation Act, 1996. The Arbitrators then multiplied the rate of Rs.1409/- per sq. ft. with the area which formed the subject matter of the agreement viz. 21,528 sq. ft. The Arbitrators rejected the Respondent’s computation of 27,986 sq. ft. Whether the Respondent’s computation of 27,986 is correct or not is a matter which will be decided in the Respondent’s petition filed in the Thane Court.

9. As far as the Petitioner before me is concerned,

there is nothing to suggest that the area of 21,528 is erroneous. Indeed, the Petitioner has not challenged the computation of the area of 21,528.

10. The Petitioner further contends that there was no evidence whatsoever for computing the profit at 25%. Indeed, if the percentage of profit is accepted as correct, no fault can be found with the award. The Respondents lead the evidence of its expert, who computed the profit at 66%. This was rejected and the arbitrators came to the conclusion at 25%. This again is a pure question of fact which has been arrived at on the basis of the material produced before the arbitrators and warrants no evidence. The reference in paragraph 37 of the award, to the net profit ratio is not relevant for the aforesaid reasoning of the arbitrator. The net profit ratio of 3.71% to 5.51% referred to in the evidence read with the profit and loss account, obviously refers to the over all position regarding the accounts of the firm. Merely because in the last sentence of paragraph 37 it is stated that 5.51% is the profit on turnover, the award would not be vitiated. The award, read as a whole and read fairly, does not indicate that the arbitrators accepted that the Respondents operated on a 5.5%

margin of profit.

11. The next contention is that the arbitrators wrongly assumed the period of completion of the building to be only two years while fixing the date from which the damages were to be deducted. This again is a matter of appreciation of facts. Whether it is two years or three years, is a question for the arbitrators to decide and not for the Court exercising jurisdiction under section 34 of the Arbitration Act.

12. In the circumstances, the petition is dismissed